IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.184 OF 2007

Prashant Kushe & Ors. .. Petitioners

Versus

The North Canara GSB

Co-Operative Bank Ltd. & Ors. .. Respondents

ALONGWITH

ARBITRATION PETITION NO.185 OF 2007

Pradeep Anant Rane & Ors. .. Petitioners.

Versus

The North Canara GSB

Co-Operative Bank Ltd. & Ors. .. Respondents.

Mr.J.P.Shah for petitioners.

Mr.Bhadrashete for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st September, 2007.

P.C.

1. These petitions are by the principal borrowers and the guarantors, challenging the Awards made against them and in favour of the respondent Bank.

2. The case of the petitioners before me is that, firstly, the Award is rendered in breach of principles of natural justice inasmuch as the same is ex-parte Award. No opportunity was given to the petitioners to defend the claim of the respondent Bank. It was incumbent upon the Arbitrator to have issued notices of the hearings before him, if the petitioners were absent on several occasions. That the Respondent Bank had

been issued such notices is an admitted position, yet, the Award is made by the Arbitrator. He holds that the claim is admitted and there is no defence or dispute raised with regard to the liability. He has relied upon a reply to the application for interim measures and treated the same as a written statement. No opportunity was granted to file written statement. In such circumstances, the Award is vitiated and liable to be set aside.

3. The second submission is that the Arbitral Tribunal had no jurisdiction to entertain and try the reference inasmuch as the petitioners and the respondent Nos.2 and 3, who are sureties are not members of the respondent Bank. Section 84 of the Multi-State Co-operative Societies Act, 2002, envisages that for a claim to be referred to arbitration, the parties thereto must be Multi-State Co-operative Society

and a member. In the present case, the borrowers are not members and in any event, the sureties cannot be said to be members because they are sureties of the borrowers. There is no direct relationship or in any event there is no privity insofar as respondent Bank and the sureties are concerned. In such circumstances, this issue goes to the root of the matter and the arbitration Award requires to be interfered with and set aside.

4. Alternatively, it is submitted that the learned Arbitrator exceeded his jurisdiction by issuing directions, including for execution and due implementation of the Award and such directions could not have been issued by him. The Arbitrator in issuing the impugned directions has gone beyond the terms of the reference and even the Mandate of the Arbitration and Conciliation Act, 1996 so also the Multi-State

Co-operative Societies Act, 2002. In such circumstances, the Award is liable to be set aside on this ground as well. Then, calling upon the petitioners to pay arbitration fees and administrative costs is also unwarranted and untenable.

5. Mr.Bhadrashete appearing for the respondents invites my attention to the affidavit filed in reply to this petition and also Section 84 of the said Act. He submits that ample opportunity was given by the Arbitral Tribunal to the petitioners to appear before it and defend the claim. That opportunity has not been availed of. In fact, on one occasion, the parties approached the Bank for amicable settlement and admitted their liability. However, they are now impugning the Award on flimsy and trivial grounds. He has invited my attention to the affidavit and a categorical statement therein to

the effect that the petitioners (borrowers and sureties) are members of the respondent Bank. He submits that the Arbitrator has not committed any error in issuing the directions which are ancillary.

6. With regard to the submission of Mr.Shah that the Arbitrator had granted the claim of the respondent Bank and while doing so issued certain directions, Mr.Bhadrashete does not dispute that the order dated 31st August, 2006 was challenged in appeal and the said order of the Arbitral Tribunal has been stayed by this Court. Further, Mr.Bhadrashete does not dispute that at the stage at which the proceedings were, the Arbitrator could not have directed that the employer of the petitioners be intimated and the dues be recovered through him. In such circumstances, these two directions are clearly without jurisdiction. However, they are severable and

can be separated from the rest of the Award.

7. The jurisdiction of the Arbitrator to issue such directions being a distinct submission, in my view, the Award to the extent it issues directions in its operative part at clauses 2 and 3 is modified and the said directions are set aside by consent of parties. However, Respondent Bank is at liberty to execute the Award in accordance with law irrespective of the Award being set aside to the above extent.

8. However, with regard to the submission that the matter could not have been proceeded by the Arbitral Tribunal, I am unable to accept the challenge to jurisdiction in the absence of pleas being raised before the Arbitral Tribunal. It is well settled and even by the provisions of Multi-State Co-operative Societies Act, 2002, that the reference to the Arbitrator under the

said Act has to be dealt with in accordance with the Arbitration and Conciliation Act, 1996. That is clear from Section 84 itself and more particularly, sub-Section 4 and 5 thereof. In such circumstances, it is apparent that the petitioners could have appeared before the Arbitrator and raised the issue of his jurisdiction. Despite submitting to the jurisdiction of the Arbitrator, the said issue could have been raised if it goes to the root of the matter at the first instance itself. That having not been done, I am unable to accept the contention of Mr.Shah that the Award is liable to be set aside on the ground of jurisdiction. That apart, in the affidavit in reply filed by the respondent Bank to which, no rejoinder is filed, it is specifically urged by the Bank that the membership register, application and other documents in their possession would demonstrate that the petitioners (principal borrowers as well

as sureties) are members of the respondent Bank. In these circumstances, even the challenge on the ground of jurisdiction of the Arbitrator must fail.

9. The third contention also need not be gone into by me inasmuch as ample opportunity has been given by the Arbitral Tribunal to the petitioners to defend the claim. It is not as if the Arbitral Tribunal has proceeded hastily and without any intimation. The petitioners were aware of the lodging of the claim by the respondent Bank. The petitioners also appeared at the hearing of the interim application, nothing prevented them to file written statement. That opportunity has not been availed of. There is nothing from the record which has been pointed out to me to nullify the finding in paragraph 2 of the Award. Thus, the Arbitrator has not committed any error nor the Award can be said to

be vitiated under Section 34 of the Arbitration and Conciliation Act, 1996, and more particularly, under Section 34(2)(iii). It is not as if the petitioners were not given proper notice of the appointment of the Arbitrator or of the arbitral proceedings or were otherwise unable to present their case. From the findings rendered by the Arbitrator in the Award, it is clear that the petitioners had such opportunity throughout.

10. In the above circumstances, I do not feel that any case is made out for interference with the subject Awards, more so, in the limited jurisdiction, conferred upon this Court, under Section 34 of the Arbitration and Conciliation Act, 1996.

11. Subject to the modifications as above, each of these petitions are dismissed. It is

also directed that the petitioners shall not be liable to pay costs / fees of the Arbitrator and administrative expenses.

12. The arbitration petitions are dismissed subject to above. No order as to costs.

(S.C.Dharmadhikari, J.)